

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

AMAZON.COM, INC. and AMAZON  
DATA SERVICES, INC.,

Plaintiffs,

v.

WDC HOLDINGS LLC dba NORTHSTAR  
COMMERCIAL PARTNERS; BRIAN  
WATSON; STERLING NCP FF, LLC;  
MANASSAS NCP FF, LLC; NSIPI  
ADMINISTRATIVE MANAGER; NOVA  
WPC LLC; WHITE PEAKS CAPITAL LLC;  
VILLANOVA TRUST; CASEY  
KIRSCHNER; ALLCORE DEVELOPMENT  
LLC; FINBRIT HOLDINGS LLC;  
CHESHIRE VENTURES LLC; CARLETON  
NELSON; JOHN DOES 1-20,

Defendants.

CASE NO. 1:20-CV-484-LO-TCB

**PLAINTIFFS' NOTICE OF DESIGNATIONS PURSUANT TO JULY 9, 2021 ORDER**

Plaintiffs Amazon.com, Inc. and Amazon Data Services, Inc. hereby respectfully notify the Court of the following developments in accordance with the Court's July 9, 2021 Order directing Plaintiffs to identify for *in camera* review 20 documents covered by challenged entries in the privilege log that Defendants WDC Holdings LLC and Brian Watson served in this matter. Dkts. 286-11 (privilege log); 302 (July 9 order incorporating bench rulings).

On July 9, 2021, the Court ordered the parties to coordinate on a selection of log entries representative of Plaintiffs' privilege challenges that go beyond the entries that Defendants have

already conceded were improperly designated and withheld.<sup>1</sup> On July 14, 2021, the parties had a telephonic conference during which Defendants offered to waive their privilege claims on all log entries dated prior to April 1, 2020 and produce the underlying documents in exchange for Plaintiffs' agreement not to assert this agreed production as a basis for a subject matter waiver of the associated privilege claims.

Defendants' waiver proposal would obviate the need to litigate contested privilege issues on approximately 97% of Defendants' December 31, 2020 log (the proposed waiver and production would reduce the volume of the printed log from approximately 432 pages to approximately 14 pages). Accordingly, Plaintiffs accepted this offer in good faith and an effort to "decrease, in every way possible, the filing of unnecessary discovery motions" in accordance with Local Civil Rule 37(E). However, even Defendants' latest production offer does not resolve all of the longstanding deficiencies in their log, on which Plaintiffs reserve all rights and objections other than the right to seek a subject matter waiver based on Defendants' waiver of the specific, pre-April 1, 2020 log entries and claims addressed in the parties' July 15, 2021 agreement. In accepting this production to progress this litigation, Plaintiffs do not concede that the pre-April 1, 2020 documents on Defendants' log are subject to valid privilege claims, and respectfully submit that Defendants' current offer to waive privilege claims over 97% of the documents on their log confirms the pattern of obstruction and delay that Plaintiffs raised with Defendants earlier this year and in their recent motions to the Court.<sup>2</sup>

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<sup>1</sup> On February 5, 2021, Defendants conceded that at least five documents were improperly designated on their privilege log. *See* Dkts. 286-22, 286-23 (referencing entries 4945, 4981, 4982, 4985, 4986, which claimed "attorney-client privilege" over communications between Northstar personnel and Defendant Casey Kirschner, who is not an attorney and was an Amazon employee at the time the emails were sent).

<sup>2</sup> *See* Dkts. 286-22 (citing Fed. R. Civ. P. 26(b)(5)); 286-23 (conceding improper designations and committing to "re-review"); 284 at 22–25; 296 at 7–9.

In accordance with these positions and the Court's July 9 Order, Plaintiffs provided Defendants on July 14 with two lists of log entries. The first list, set forth in Appendix A to this Notice, is a list of entries that Plaintiffs identified in good faith as "representative" of their concerns with the *post*-April 1, 2020 privilege claims that Defendants have not abandoned, and continue to maintain as privileged over Plaintiffs' objections. Appendix B to this Notice lists 20 both pre- and post-April 1, 2020 entries that Plaintiffs provided to Defendants on July 14 to illustrate and preserve Plaintiffs' objections to Defendants' privilege claims over documents logged with dates both prior to and after April 1, 2020.

Plaintiffs respectfully submit that the 20 entries identified in Appendix A should be produced for *in camera* review in accordance with the July 9 Order if the Court agrees that Defendants' voluntary production of the pre-April 1, 2020 documents on the log moots the need for judicial review of those documents. In the event the Court wishes also to review pre-April 1, 2020 documents notwithstanding Defendants' voluntary production, Plaintiffs respectfully suggest that the Court review the documents listed in Appendix B.

## **APPENDIX A**

### **Post-April 1, 2020 Illustrative Log Deficiencies**

- **No Counsel Identified for Attorney-Client Claims on Communications “With Counsel”**
  1. Entry 4037 – Email from John Shillingburg at Northstar to Brian Watson, copying Northstar employees Michelle Wright and Scott Jacobs, with the subject line “Re: Development Agreements,” dated April 14, 2020 and described in the log as “email exchange with counsel re development agreements.”
  2. Entry 5094 – Email from Kristi Fisher at Northstar to third party Jennifer Clampert at IMA Corp., Jake Meilach at Northstar and Defendant Brian Watson, copying Brownstein attorneys Stanley Garnett and Gregory Brower, with the subject line “RE: Injunction bond,” dated May 29, 2020, and described in the log as “Email exchange with counsel re bond.”
  3. Entry 5139 – Email from Defendant Brian Watson to Northstar employees Kristi Fisher and Chris Wigley, with the subject line “Re: Northstar,” dated May 8, 2020 and described in the log as “email exchange with counsel re Manassas and sterling.”
  4. Entry 5141 – Email from Defendant Brian Watson to Northstar employees Kristi Fisher Chris Wigley, and Scott Jacobs, with the subject line “Re: Info Needed,” dated May 11, 2020 and described in the log as “email exchange with counsel re investments.”
  5. Entry 5207 – Email from Kristi Fisher at Northstar to Northstar employee Kimlynn Huynh, with the subject line “FW: Sterling NCP FF,” dated April 27, 2020, and described in the log as “email exchange with counsel re sterling.”
- **Entries Claiming Privilege over Documents Typically Redacted, but Not Usually Withheld (e.g., Calendar Invites, Invoices)**
  6. Entry 6140 – Email from Kerri P. Assell at Jones & Keller to Defendant Brian Watson and Northstar employees, Jaime Jones and Imane Saber, with the subject line “RE: Budget accompanying lease documents,” dated August 14, 2020, and described in the log as “Email exchange with counsel re VA deals.”
  7. Entry 6194 – Email from Kerri Assell at Jones Keller to Tim Lorman at Northstar, with the subject “VA Invoices,” dated April 3, 2020, and described in the log as “Email exchange with counsel re VA deals.”

- Entries for Communications with Third Parties That Would Break Privilege

8. Entry 5095 – Email from Kristi Fisher at Northstar to Jake Meilach at Northstar and Defendant Brian Watson, copying third party Jennifer Clampert at IMA Corp., and Brownstein attorneys Stanley Garnett and Gregory Brower, with the subject line “RE: bond,” dated May 29, 2020, and described in the log as “Email exchange with counsel re bond.”

- Entries Lacking Sufficient Any Details About Which Counsel Provided Advice or What Advice is Reflected Therein

9. Entry 5067 – Email from unknown sender to Northstar employees Jaime Jones and Chris Wigley, with the subject line “RE: Phases 1, 3, 4 complete – RE : SEC Subpoena,” dated May 21, 2020, and described in the log as “Internal email exchange re advice of counsel.”
10. Entry 5091 – Email from Kristi Fisher at Northstar to Northstar employee Jaime Jones, with the subject line “RE: Phase 5 – RE: SEC Subpoena,” dated June 1, 2020, and described in the log as “Internal email exchange re advice of counsel.”
11. Entry 5101 Email from unknown sender to Defendant Brian Watson and Northstar employee Chris Wigley, with the subject line “Re: seizure,” dated May 20, 2020, and described in the log as “Internal email exchange re advice of counsel.”
12. Entry 5157 – Email from Kristi Fisher at Northstar to Defendant Brian Watson and Northstar employee Chris Wigley, with the subject line “RE: Northstar,” dated May 11, 2020, and described in the log as “Internal email exchange with counsel re VA deals.”
13. Entry 5167 – Email from unknown sender to Defendant Brian Watson and Northstar employee Chris Wigley, with the subject line “RE: Northstar Retainer,” dated April 16, 2020, and described in the log as “Internal email exchange re advice of counsel.”
14. Entry 5202 – Email from Chris Wigley at Northstar to Defendant Brian Watson and copying Northstar employee Kristi Fisher, with the subject line “RE: VM Full Again,” dated July 1, 2020, and described in the log as “Internal email exchange re advice of counsel.”
15. Entry 5222 – Email from Kristi Fisher at Northstar to Defendant Brian Watson and Northstar employee Chris Wigley, with the subject line “FW: Northstar,” dated June 30, 2020, and described in the log as “Internal email exchange re advice of counsel.”
16. Entry 6132 – Email from Jamie Jones at Northstar to Defendant Brian Watson and Northstar employee Kristi Fisher, copying Northstar employee David Gomez, with the subject line “RE: Sterling NCP FF Investor Capital Call Spreadsheet,” dated September 11, 2020, and described in the log as “Internal email exchange with counsel.”

17. Entry 6144 – Email from Imane Saber at Northstar to Defendant Brian Watson and Jaime Jones at Northstar, with the subject line “Re: Budget accompanying lease documents,” dated August 13, 2020, and described in the log as “Internal email exchange re advice of counsel.”
18. Entry 6145 – Email from Imane Saber at Northstar to Defendant Brian Watson and Northstar employees Jaime Jones and Miles Langham, copying Northstar employees Kristi Fisher, Jonathan Smith, and Scott Gibler, with the subject line “RE: Northstar SEC Investigation,” dated July 31, 2020 and described in the log as “Internal email exchange re advice of counsel.”
19. Entry 6149 – Email from Jaime Jones to Defendant Brian Watson, copying Northstar employees David Gomez and Kristi Fisher, with the subject line “RE: Manassas,” dated August 26, 2020 and described in the log as “Internal email exchange re advice of counsel.”
20. Entry 6153 – Email from Jaime Jones at Northstar to Defendant Brian Watson, with the subject line “RE: Budget accompanying lease documents,” dated August 12, 2020, and described in the log as “Internal email exchange re advice of counsel.”

## APPENDIX B

### **Pre-April 2020 Illustrative Log Deficiencies**

- No Counsel Identified for Attorney-Client Privilege Claimed on Communications “With Counsel”
  1. Entry 10 – Email from Brian Watson to Kyle Ramstetter and Will Camenson,<sup>\*3</sup> with the subject line “FW: ISI Promote Buyout,” and dated May 31, 2019.
  2. Entry 57 – Email from Jaime Jones to Will Camenson and Kyle Ramstetter,<sup>\*4</sup> with the subject line “RE: New Funds,” and dated September 25, 2019.
  3. Entry 4037 – Email from John Shillingburg at Northstar to Brian Watson, copying Northstar employees Michelle Wright and Scott Jacobs, with the subject line “Re: Development Agreements,” dated April 14, 2020 and described in the log as “email exchange with counsel re development agreements.”
  4. Entry 5139 – Email from Defendant Brian Watson to Northstar employees Kristi Fisher and Chris Wigley, with the subject line “Re: Northstar,” dated May 8, 2020 and described in the log as “email exchange with counsel re Manassas and sterling.”
  5. Entry 5141 – Email from Defendant Brian Watson to Northstar employees Kristi Fisher Chris Wigley, and Scott Jacobs, with the subject line “Re: Info Needed,” dated May 11, 2020 and described in the log as “email exchange with counsel re investments.”
  6. Entry 5207 – Email from Kristi Fisher at Northstar to Northstar employee Kimlynn Huynh, with the subject line “FW: Sterling NCP FF,” dated April 27, 2020, and described in the log as “email exchange with counsel re sterling.”
- Entries with Attorney-Client Privilege Claimed but with No Author, Sender, or Recipient Listed
  7. Entry 203 – No author, sender, or recipient listed, with the subject line “Legal invoice re Sterling,” dated July 25, 2018.

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<sup>3</sup> Entries with an asterisk (\*) involve communications among the same non-lawyers copied on communications that Defendants produced as non-privileged. *E.g.*, Dkt. 286-31 (WDC0246537).

<sup>4</sup> To illustrate the concern further, Plaintiffs also identified for Defendants log entries: 133 (from Kristi Fisher to Brent Gray and Danny Mulcahy, copying Kyle Ramstetter and Will Camenson)\*; 315 (from Brian Watson to Kyle Ramstetter)\*; 573 (from Ramstetter to David Gomez)\*; 727 (Kyle Ramstetter to himself)\*; 1694 (Ramstetter to Danny Mulcahy)\*; 5182 (Brian Watson with no information about recipients).\*

8. Entry 652 – No author, sender, or recipient listed, with the subject line “Draft architect agreement,” dated April 2, 2019.
  9. Entry 6157 – Email with no author, sender, or recipient listed, with the subject line “FW: Follow-UP | NCP Acquisition Fee Issue,” dated February 20, 2020, and described as: “Email exchange with counsel re VA deals.”<sup>5</sup>
- Entry That Claims Work Product Over Documents Dated Before This Litigation Began<sup>6</sup>
    10. Entry 245 – “Legal invoice re VA deals” dated July 23, 2018.
  - Entries Claiming Privilege over Documents Typically Redacted, but Not Usually Withheld (e.g., Calendar Invites, Invoices)
    11. Entry 759 – Calendar invite re VA Deals with the subject line “IAD175 Review,” from Kimlynn Huynh (apparently an administrative assistant at Northstar) to Kyle Ramstetter (also at Northstar) and Kerri Assell at Jones & Keller, dated September 23, 2019.<sup>7</sup>
  - Entries for Communications with Third Parties That Would Break Privilege
    12. Entry 1262 – Email from David Dutton at Dutton Associates, a survey company, to Kyle Ramstetter at Northstar, with the subject line “Re: Loudon County Cemetery Delineation,” dated January 16, 2018, and described in the log as “email exchange with counsel re dulles.”
    13. Entry 2054 – Email from Kyle Ramstetter at Northstar to Johnny Lim at JCL Consulting, with the subject line “Fwd: Manassas NCP, LLC,” dated September 2, 2018, and described in the log as “email exchange with counsel re manassas.”
    14. Entry 5862 – Email from Jaime Jones at Northstar to Patricia Watson, and Northstar employees Nick Boshinski, Scott Gibler and Gabe Uhrig and copying David Budrow at Budrow Architects, with the subject line “RE: Lexington” and dated March 9, 2018. This email also does not include a description in the last column of the log.
    15. Entry 5094 – Email from Kristi Fisher at Northstar to third party Jennifer Clampert at IMA Corp., Jake Meilach at Northstar and Defendant Brian Watson, copying

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<sup>5</sup> See also, e.g., Entries 843, 1435, 5069, 6158.

<sup>6</sup> This entry is representative of all work production claims in the privilege log, since all such claims pre-date April 2020.

<sup>7</sup> See also, e.g., Entries 774, 3297.



Brownstein attorneys Stanley Garnett and Gregory Brower, with the subject line “RE: Injunction bond,” dated May 29, 2020, and described in the log as “Email exchange with counsel re bond.”

- Entries Lacking Any Detail About Which Counsel Provided Advice or What Advice is Reflected Therein

16. Entry 5101 Email from unknown sender to Defendant Brian Watson and Northstar employee Chris Wigley, with the subject line “Re: seizure,” dated May 20, 2020, and described in the log as “Internal email exchange re advice of counsel.”
17. Entry 5167 – Email from unknown sender to Defendant Brian Watson and Northstar employee Chris Wigley, with the subject line “RE: Northstar Retainer,” dated April 16, 2020, and described in the log as “Internal email exchange re advice of counsel.”
18. Entry 5202 – Email from Chris Wigley at Northstar to Defendant Brian Watson and copying Northstar employee Kristi Fisher, with the subject line “RE: VM Full Again,” dated July 1, 2020, and described in the log as “Internal email exchange re advice of counsel.”
19. Entry 6144 – Email from Imane Saber at Northstar to Defendant Brian Watson and Jaime Jones at Northstar, with the subject line “Re: Budget accompanying lease documents,” dated August 13, 2020, and described in the log as “Internal email exchange re advice of counsel.”
20. Entry 6145 – Email from Imane Saber at Northstar to Defendant Brian Watson and Northstar employees Jaime Jones and Miles Langham, copying Northstar employees Kristi Fisher, Jonathan Smith, and Scott Gibler, with the subject line “RE: Northstar SEC Investigation,” dated July 31, 2020 and described in the log as “Internal email exchange re advice of counsel.”

Dated: July 15, 2021

Respectfully submitted,

s/ Michael R. Dziuban

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2021, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system. I will then send the document and a notification of such filing (NEF) to the following parties via U.S. mail to their last-known address and by email, where noted:

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